



## **DEPARTMENT OF DEFENSE**

### **Department of the Army, Corps of Engineers**

#### **33 CFR Part 334**

**[COE-2022-0009]**

#### **Establishment of Three Danger Zones for the Naval Support Activity**

#### **Annapolis, Annapolis, Maryland, in the Waters of Carr Creek and Whitehall Bay**

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Corps of Engineers is proposing to establish three danger zones in the waters of Carr Creek and Whitehall Bay in the vicinity of the Naval Support Activity Annapolis. The establishment of the proposed danger zone in Carr Creek is necessary to enable safe operation of the United States Naval Academy firing range and to reflect the routine and periodic usage of the firing range for training sailors, midshipmen, and law enforcement personnel. The establishment of the two proposed danger zones in Whitehall Bay is necessary to enable the safe operation of the United States Naval Academy firing range and to reflect irregular and infrequent usage of the range for training sailors, midshipmen, and law enforcement personnel. The firing range faces Carr Creek and, during times of operation, may present a danger to vessels located in the areas of the proposed danger zones.

**DATES:** Written comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by docket number COE-2022-0009, by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil). Include the docket number, COE-2022-0009, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2022-0009. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and also include your contact information with any compact disk you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the

use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Division, Washington, DC at 202-761-4922.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to its regulations at 33 CFR part 334 for the establishment of three danger zones in the waters of Carr Creek and Whitehall Bay near Annapolis, Maryland. In a memorandum dated June 10, 2022, the Naval Support Activity Annapolis requested that the Corps establish these three danger zones. The proposed danger zones are necessary to ensure the safe operation of the United States Naval Academy firing range.

The proposed danger zone in Carr Creek is needed to enable the safe operation of the United States Naval Academy firing range. The firing range is used for training sailors, midshipmen, and law enforcement personnel on an irregular daily schedule, including weekends. The firing range faces Carr Creek and, during times of operation, may present a danger to vessels located within the proposed danger zone. When firing is in progress, a flashing red light and

warning sign at the boundary of the danger zone will warn persons, vessels, or other watercraft of danger.

The two proposed danger zones in Whitehall Bay are also needed to enable the safe operation of the United States Naval Academy firing range. During operation of the firing range in a manner that affects these proposed danger zones, persons, vessels, or other watercraft will be notified of closure of these two danger zones by a Local Notice to Mariners.

#### Procedural Requirements

a. Regulatory Planning and Review. This proposed rule is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011) and it was not submitted to the Office of Management and Budget for review.

b. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq. This proposed rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments).

The Corps certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed danger zones are necessary for the safe operation of the United States Naval Academy firing range and the safety of persons, vessels, or other watercraft in the vicinity of Carr Creek and Whitehall Bay. When the firing range

is in operational use, small entities can utilize navigable waters outside of the three danger zones. Small entities that need to transit the danger zones may do so as long as the vessel operator obtains permission from the Superintendent, U.S. Naval Academy or their designated representatives. This determination is based on the proposed rule governing the danger zones, including the ability for vessel operators to obtain permission from the Superintendent, U.S. Naval Academy or their designated representatives to transit the danger zones. Unless information is obtained to the contrary during the comment period, the Corps expects that the economic impact of the proposed danger zones would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this danger zone regulation on small entities, I certify that this proposed rule would not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no significant intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act. This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a federal private sector mandate and it is not subject to the requirements of either section 202 or section 205 of the Unfunded Mandates Act. We have also found under

section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted Areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

#### **PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.148 to read as follows:

#### **§ 334.148 Carr Creek and Whitehall Bay, in vicinity of Naval Support Activity Annapolis, U.S. Naval Academy firing range danger zones.**

(a) *The areas*—(1) *Danger zone #1.* All navigable waters of Carr Creek, as defined at part 329 of this chapter, north of the line drawn southeasterly from latitude 38°59'3" N, longitude -76°27'35" W to latitude 38°58'53" N longitude -76°27'15" W across the mouth of Carr Creek.

(2) *Danger zone #2.* Navigable waters of Whitehall Bay, as defined at part 329 of this chapter, within the area bounded by a line connecting the following coordinates: latitude 38°58'53" N, longitude -76°26'57" W; thence to latitude 38°58'37" N, longitude -76°26'10" W; thence to latitude 38°58'16" N, longitude -76°26'28" W; thence to latitude 38°58'45" N, longitude -76°27'4" W; and thence along the shoreline to the point of origin.

(3) *Danger zone #3.* Navigable waters of Whitehall Bay, as defined at part 329 of this chapter, within the area bounded by a line connecting the following coordinates: latitude 38°58'28" N, longitude -76°26'17" W; thence to latitude 38°58'14" N, longitude -76°25'53" W; thence to latitude 38°58'0" N, longitude -76°26'9" W; thence to latitude 38°58'16" N, longitude -76°26'28" W; thence to the point of origin.

(4) *Datum.* The datum for the coordinates in paragraphs (a)(1) through (3) of this section is North American Datum 1983 (NAD-83).

(b) *The regulations—*(1) *Danger zone #1.* (i) When firing is in progress, all persons, vessels, or other watercraft are prohibited from entering, transiting, drifting, dredging, or anchoring within the danger zone without the permission of the Superintendent, U.S. Naval Academy or their designated representatives.

(ii) When firing is in progress, a flashing red light and warning sign at the boundary of the danger zone will warn persons, vessels, or other watercraft of danger.

(2) *Danger zones #2 and #3.* (i) Prior to and during periods when firing is in progress, shore observers will be on duty, and/or the range will be patrolled by naval surface craft to warn persons, vessels, or other watercraft likely to be endangered. All persons, vessels, or other watercraft so warned shall vacate the applicable danger zone and are prohibited from entering, transiting, drifting,

mooring, anchoring, and/or conducting any activity within that danger zone until the conclusion of firing practice without the permission of the Superintendent, U.S. Naval Academy or their designated representatives.

(ii) No firing will occur during hours of darkness or low visibility that would impede viewing of persons, vessels, or other watercraft by shore observers.

(iii) The Superintendent, U.S. Naval Academy is responsible for furnishing in advance the firing schedule for danger zones 2 and 3 to Commander, Fifth Coast Guard District, for publication in a Local Notice to Mariners.

(c) *Enforcement.* The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, Annapolis, Maryland and such agencies as they may designate.

**Thomas P. Smith,**

*Chief, Operations and Regulatory Division.*